

**Effective 7/1/2015**

## **Part 7 Bonding Authority**

### **63H-7a-700 Title.**

This part is known as "Bonding Authority."

Enacted by Chapter 411, 2015 General Session

### **63H-7a-701 Bond authorized -- Payment -- Security -- Liability -- Purpose -- Exemption from certain taxes.**

- (1)
  - (a) The authority shall report its intent to issue bonds under this part to the Legislature's Executive Appropriations Committee prior to the board adopting a resolution to issue a bond under Subsection 63H-7a-702.
  - (b) The Legislature's Executive Appropriations Committee may, but is not required to, advise the board regarding the Executive Appropriations Committee's determination that:
    - (i) issuing a bond is necessary to carry out the duties and operation of the authority, and the state's strategic plan adopted under Subsection 63H-7a-204(18); or
    - (ii) issuing a bond is:
      - (A) not necessary to carry out the duties and operation of the authority, and the state's strategic plan adopted under Subsection 63H-7a-204(18); or
      - (B) not appropriate based on some other reason decided by the Executive Appropriations Committee.
- (2) The authority may:
  - (a) issue bonds from time to time for any of its corporate purposes provided in Section 63H-7a-102;
  - (b) issue refunding bonds for the purpose of paying or retiring bonds previously issued by it;
  - (c) issue bonds on which the principal and interest are payable:
    - (i) exclusively from the income, purchase or lease payments, and revenues of all or a portion of the public safety communications network; or
    - (ii) from its revenues generally.
- (3) Any bonds issued by the authority may be additionally secured by a pledge of any loan, lease, grant, agreement, or contribution, in whole or in part, from the federal government or other source, or a pledge of any income or revenue of the authority.
- (4) The officers of the authority and any person executing the bonds are not liable personally on the bonds.
- (5)
  - (a) The bonds and other obligations of the authority are not a debt of any member or state representative of the authority, and do not constitute indebtedness for purposes of any constitutional or statutory debt limitation or restrictions.
  - (b) The face of the bonds and other obligations shall state the provisions of Subsection (5)(a).
- (6) Any bonds of the authority shall be revenue obligations, payable solely from the proceeds, revenues, or purchase and lease payments received by the authority for the public safety communications network.
- (7) The full faith and credit of any member or state representative may not be pledged directly or indirectly for the payment of the bonds.

- (8) A member or state representative may not incur any pecuniary liability under this chapter until it enters into a service contract, lease, or other financing obligation with the authority. Once a member enters into a service contract, lease, or other financing obligation with the authority, the member shall be obligated to the authority as provided in that contract, lease, or financing obligation.
- (9) A bond or obligation may not be made payable out of any funds or properties other than those of the authority.
- (10) Bonds of the authority are:
  - (a) declared to be issued for an essential public and governmental purpose by public instrumentalities; and
  - (b) together with interest and income, exempt from all taxes, except the corporate franchise tax.
- (11) The provisions of this chapter exempting the properties of the authority and its bonds and interest and income on them from taxation shall be considered part of the contract for the security of bonds and have the force of contract, by virtue of this part and without the necessity of this being restated in the bonds, between the bondholders, including all transferees of the bonds, the authority and the state.

Amended by Chapter 123, 2016 General Session

**63H-7a-702 Bonds to be authorized by resolution -- Form -- Sale -- Negotiability -- Validity presumed.**

- (1) Bonds of the authority shall:
  - (a) be authorized by resolution of the board and may be issued in one or more series;
  - (b) bear dates, mature, bear interest rates, be in denominations, be either coupon or registered, carry conversion or registration privileges, have rank or priority, be executed, and be payable; and
  - (c) be subject to terms of redemption, with or without premium, as the resolution or its trust indenture provides.
- (2) The bonds may bear interest at a fixed or variable interest rate as the resolution provides. The resolution may establish a method, formula, or index pursuant to which the interest rate on the bonds may be determined from time to time.
- (3) In connection with the bonds, and on behalf of the authority, the board may authorize and enter into agreements or other arrangements with financial, banking, and other institutions for letters of credit, standby letters of credit, surety bonds, reimbursement agreements, remarketing agreements, indexing agreements, tender agent agreements, and other agreements to secure the bonds, to enhance the marketability and creditworthiness of the bonds, to determine a fixed or variable interest rate on the bonds, and to pay from any legally available source, including the proceeds of the bonds, of fees, charges, and other amounts coming due with respect to any such agreements.
- (4) The bonds may be sold at public or private sale in a manner and at prices, either at, in excess of, or below par value as provided by resolution of the board.
- (5) If members or officers of the authority whose signatures appear on bonds or coupons cease to be members or officers before the delivery of the bonds, their signatures are valid and sufficient for all purposes.
- (6) Any bonds issued under this part are fully negotiable.
- (7) In any suit, action, or proceeding involving the validity or enforceability of any bond of the authority or the security for it, any bond reciting in substance that it has been issued by the authority to aid in financing the public safety communications network shall be conclusively

considered to have been issued for such purposes, and the public safety communications network shall be conclusively considered to have been planned, located, and carried out in accordance with this part.

Renumbered and Amended by Chapter 411, 2015 General Session

**63H-7a-703 Bonds and other obligations -- Additional powers of the authority.**

In connection with the issuance of bonds or the incurring of obligations under leases, and in order to secure the payment of bonds or obligations, the authority, in addition to its other powers, may:

- (1) pledge all or any part of its gross or net rents, fees, or revenues to which its right then exists or may accrue in the future;
- (2) mortgage all or any part of its real or personal property owned or acquired in the future;
- (3) covenant against:
  - (a) pledging all or any part of its rents, fees, and revenues;
  - (b) mortgaging all or any part of its real or personal property to which its right or title then exists or accrues in the future;
  - (c) permitting any lien on its revenues or property;
  - (d) extending the time for the payment of its bonds or interest on them;
  - (e) the use and disposition of the money held in the funds in Subsection (7); and
  - (f) the use, maintenance, and replacement of any or all of its real or personal property;
- (4) covenant as to:
  - (a) bonds to be issued;
  - (b) the issuance of bonds in escrow or otherwise;
  - (c) the use and disposition of the bond proceeds;
  - (d) the insurance to be carried on the property in Subsection (3)(f) and the use and disposition of insurance money; and
  - (e) the rights, liabilities, powers, and duties arising upon its breach of any covenant, condition, or obligation;
- (5) provide for the replacement of lost, destroyed, or mutilated bonds;
- (6) covenant for the redemption of the bonds and provide the terms and conditions for their redemption;
- (7) create or authorize the creation of special funds for money held for construction or operating costs, debt service, reserves, or other purposes;
- (8) prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the number of bondholders of outstanding bonds which must consent to the action, and the manner in which consent shall be given;
- (9) covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;
- (10) vest in any obligee of the authority or any specified proportion of them the right:
  - (a) to enforce the payment of bonds or any covenants securing or relating to the bonds;
  - (b) after default by the authority to:
    - (i) take possession of and use, operate, and manage any facilities or any part of it or any funds connected with the facilities and funds, and collect the revenues arising from them; and
    - (ii) dispose of the facilities and funds in accordance with the agreement with the authority;
- (11) provide the:
  - (a) powers and duties of an obligee and limit the obligee's liabilities; and

- (b) terms and conditions upon which the obligees may enforce any covenant or rights securing or relating to the bonds;
- (12) exercise all or any part or combination of the powers granted in this chapter;
- (13) perform any acts necessary, convenient, or desirable to secure its bonds; and
- (14) make any covenants or perform any acts calculated to make the bonds more marketable.

Renumbered and Amended by Chapter 411, 2015 General Session

**63H-7a-704 Reserve funds for debt service.**

- (1) To assure the continued operation and solvency of the authority for the carrying out of its purpose, the authority may establish reserve funds necessary to secure the payment of debt service on its bonds.
- (2) The resolution authorizing the issuance of the bonds shall specify the minimum amount that is required to be on deposit in the reserve funds.
- (3) The chair shall annually, on or before December 1, certify to the governor, the director of finance, and to each member the amount, if any, required to restore the funds to their required funding levels.
- (4)
  - (a) The governor may request from the Legislature an appropriation of the amount certified in Subsection (3) to restore the reserve funds to their required funding levels or to meet any projected principal or interest payment deficiency. Any amount appropriated shall be repaid to the General Fund of the state in excess of the amounts which the board determines will keep it self-supporting.
  - (b) The board shall adjust the fees of the members so that the state is repaid for the amount appropriated in Subsection (4)(a) within 18 months after the state has paid the deficit.
- (5) The members are jointly responsible for 1/2 the amount certified in Subsection (3) to restore the reserve funds to their required funding levels. The board may request from each member money proportionate to their participation in the network to restore the funding level. Any amount paid by the members shall be proportionally repaid to them from 1/2 of any money in excess of the amounts which the board determines will keep it self-supporting.

Renumbered and Amended by Chapter 411, 2015 General Session

**63H-7a-705 Investment of the authority funds.**

The state treasurer shall invest all money held on deposit by or on behalf of the authority. The board may provide advice to the state treasurer concerning investment of the money of the authority.

Renumbered and Amended by Chapter 411, 2015 General Session

**63H-7a-706 Publication of notice, resolution, or other proceeding -- Period for contesting.**

- (1) The board may provide for the publication of any resolution or other proceedings adopted under this chapter:
  - (a) in a newspaper of general circulation within the state; and
  - (b) as required in Section 45-1-101.
- (2) In case of a resolution or other proceeding providing for the issuance of bonds, the board may, in lieu of publishing the entire resolution or other proceeding, publish a notice of bonds to be issued containing:

- (a) the name of the issuer;
  - (b) the purpose of the issue;
  - (c) the type of bonds and the maximum principal amount which may be issued;
  - (d) the maximum number of years over which the bonds may mature;
  - (e) the maximum interest rate which the bonds may bear, if any;
  - (f) the maximum discount from par, expressed as a percentage of principal amount, at which the bonds may be sold; and
  - (g) the times and place where a copy of the resolution or other proceeding may be examined, which shall be at the principal office of the authority during regular business hours and for a period of at least 30 days after the publication of the notice.
- (3) For a period of 30 days after the publication, any person in interest may contest the legality of the resolution or proceeding, any bonds which may be authorized by the resolution or proceeding, or any provision made for the security and payment of the bonds by filing a pleading with the district court for the city in which the authority maintains its principal office.

Renumbered and Amended by Chapter 411, 2015 General Session